

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:09-CT-3103-FL

FILED

FEB 16 2011

DENNIS P. IAVARONE, CLERK
US DISTRICT COURT, EDNC
BY  DEP CLK

DAVID C. JENKINS-BEY,

Plaintiff,

v.

DOCTOR EURIGIA LAND, et al.,

Defendants.

ORDER

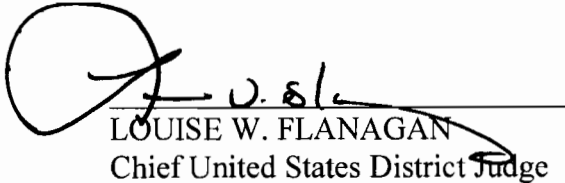
David C. Jenkins-Bey (“plaintiff”) filed this action pursuant to 42 U.S.C. § 1983. Presently before the court is plaintiff’s request for voluntary dismissal without prejudice (DE # 81). Also before the court is the joint stipulation of dismissal (DE # 82) filed by defendants Teresa Tomlinson (“Tomlinson”) and Joseph Umesi (“Umesi”). In this posture, these matters are ripe for ruling.

An action may be dismissed voluntarily by the plaintiff without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R.Civ. P. 41(a)(1). Otherwise an action shall not be dismissed on the plaintiff’s request except upon an order of the court. See Fed. R.Civ. P. 41(a)(2).

In this case, Tomlinson and Umesi filed an answer in this action. Because defendants filed an answer, plaintiff’s action may only be voluntarily dismissed pursuant to Rule 41(a)(2), which permits voluntary dismissal “on terms that the court considers proper.” A plaintiff’s motion under Rule 41(a)(2) should not be denied absent substantial prejudice to the defendants. S.A. Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986).

As grounds for his motion, plaintiff requests that this action be dismissed because he financially is unable to obtain counsel, and because his health, among other things, prevents him from pursuing his action at this time. The court finds these reasons to be consistent with Rule 41(a)(2). The court additionally finds that Tomlinson and Umesi will not be prejudiced by the dismissal of this action based upon their joint stipulation of dismissal. Accordingly, plaintiff's motion for voluntary dismissal without prejudice (DE # 81) is GRANTED. This action is DISMISSED without prejudice, and the remaining pending motions are DENIED as moot.

SO ORDERED, this the 14th day of February, 2011.


LOUISE W. FLANAGAN
Chief United States District Judge